

AMERICAN ARBITRATION ASSOCIATION

.....
In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

**AWARD
AND OPINION**

CITY OF PHILADELPHIA, PA

Docket No. 14 390 01752 11

(P/O Sir James W. Burke #1664 PR # [REDACTED] Discharge)

.....

BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES: For the Union: **MARK L. GELEMAN, Esq.**
JENNINGS SIGMOND, P. C.

For the City: **TOI SHIELDS, ESQ.**
SENIOR COUNSEL,
CITY OF PHILADELPHIA

ISSUE: **Was the disciplinary discharge of PO Sir James Burke #1664
PR# [REDACTED] for just cause and if not, what shall be the remedy?**

PRELIMINARY STATEMENT

Having been selected in accordance with the provisions of the Collective Bargaining Agreement between the above parties, I conducted an arbitration hearing on September 6, 2012 at the offices of the American Arbitration Association in Philadelphia, PA, and via a conference call at the New Jersey American Arbitration Association at which time the parties were afforded an opportunity to present evidence and argument in support of their respective positions.

BACKGROUND

Sir James Burke, the grievant herein, was dismissed from his position of Police Officer with the City of Philadelphia PA. on November 13, 2011, for Conduct Unbecoming an Officer, Section 1.00 (Unspecified), after submitting documents requesting Military Leave for the dates of January 24, and 25, 2009 And March 21, and 22, 2009 and failed to attend the military training.

He was granted the military leave and was carried as being there during the above dates. However, the March training dates were subsequently changed to March 14, and 15, 2009. After an intensive internal investigation, it was discovered that the grievant failed to attend the training and was discharged by the military for being AWOL on numerous occasions including the dates in question herein.

An IAD investigation by Sgt. Joseph McGoldrick concluded that the grievant failed to attend any of the 2009 training dates and was therefore discharged from the military for having unsatisfactory participation, being AWOL. When he was shown the various documentation substantiating the allegations against him during the internal investigation, continued to deny the charges and

claimed in part that "I did attend the training dates in question. I will try to obtain the appropriate documents or witnesses that would verify that I was there."(C5) however such documents or witnesses were never produced by the grievant.

A P.B.I. hearing was also held and initially the three members, and subsequently a total of six members of the Department advocate, including two Deputy Commissioners, unanimously held that the appropriate punishment of the grievant herein should be twenty (20) days disciplinary suspension. However, on October 7, 2011, after a review of the record, Commissioner Ramsey, in accordance with his discretion, also found the grievant guilty and raised the penalty to dismissal effective November 13, 2011.

A grievance was submitted by the FOP on behalf of PO Burke claiming that there was no just cause for the "capital punishment" of discharge. Since the parties were unable to reach a settlement of the grievance, the issue came before me for final and binding resolution in accordance with the Collective Bargaining Agreement between the parties and under the rules of the American Arbitration Association.

CONTENTIONS OF THE CITY

The City argued in relevant part that the grievant was found guilty of submitting documents requesting Military leave for the dates of January 24, 25, and March 21, and 22, 2009 which was granted. However, an investigation revealed that the grievant failed to submit the necessary documents after his military leave ended and that he actually failed to attend the military training on the dates he requested for 2009 and several days in 2008. Additionally, the City pointed out that as a result of his excessive military AWOL he was discharge from the Military for having unsatisfactory participation.

On 10/17/11 during the internal investigation the grievant was given an opportunity to respond to the allegations now contained in the Notice of Dismissal and in the presence of FOP representatives. However, he elected not to respond.

After an IAD investigation and a P.B.I. hearing the City concluded that PO Sir James Burke, #1664 was guilty and was issued a reprimand and twenty (20) days disciplinary suspension. However, after reviewing the documents in the case, Commissioner Ramsey raised the penalty to dismissal of the grievant.

The City argued that the grievant was entirely without credibility. He committed repeated dishonesty in claiming that he attended military training when he actually failed to do so. He was guilty of conduct unbecoming an officer and should be found to have been properly dismissed from his position of Police Officer in the Philadelphia Police Department for just cause and his grievance should be dismissed.

CONTENTIONS OF THE UNION

The FOP argued in relevant part that the grievant was discharged not for just cause. It pointed out that the grievant did not lie about being scheduled for training on the above dates in question. City exhibit C6 in evidence, the Unit Record of Reserve Training, clearly indicates that the Military had the grievant scheduled to be in training on the dates in question herein. He is shown by the document to be carried on the military roster but marked as "U" indicating AWOL. However, the grievant claimed that he did in fact report for the training and that the military documentation C6, erroneously indicates his absence.

Grievant Burke also pointed out that he had served in the reserve National Guard under a six (6) year contract reporting one weekend per month. There were extended periods when he had no problem attending the scheduled training since he was working the night shift. However, he also insisted that he was not AWOL

during the above dates in question herein and that the attendance taking at the military facility was inconsistent and erroneous.

The Union insisted that the burden of proving that PO Burke lied about being scheduled for the training was not met. It argued that the Commissioner may have misread the findings that the grievant lied about being scheduled for the training not that he may have denied that he was AWOL. Although he provided no proof that he was in fact in attendance the military record shows that he was scheduled to be there.

The Union concluded that the discharge of PO Burke was not for just cause and asks that he be reinstated and made whole with the Arbitrator retaining jurisdiction with respect to the remedy.

DISCUSSION AND OPINION

The Union vigorously argued that the grievant's behavior constitutes off-duty misconduct. However, City Exhibit #6, in evidence, indicates that P/O Burke was in fact AWOL and failed to report every day of his leave when he claimed to have been scheduled to participate in military training. However, the leave audit revealed that the grievant was discharged from the military prior to the leave dates in question herein.

His leave request to fulfill his claimed military training obligations was properly approved after he presented some required documentation. I have nothing in the record to indicate that he actually attended even one day of the scheduled training in question. Exhibit C6, a military document, indicates that he was listed on and apparently expected to be present as indicated on an old "Unit Record of Reserve Training" document however he was marked AWOL on every occasion in 2009 and some in 2008 as well.

However, the same document also clearly indicates that he was AWOL on the dates in question herein. Additionally, there was credible testimony at the instant arbitration hearing before me, that he was discharged by the military for having unsatisfactory participation.

Although he denied consistently that he was AWOL every day of the scheduled training, and promised to provide documents or witnesses of his presence, there is nothing in the record to indicate that he was actually present on any of the scheduled days of training.

He was unable to document that he was not AWOL as charged by his military. He was repeatedly untruthful during the IAD investigation as revealed by City Exhibit C5, the IAD Report. I have credible evidence in the record that PO Burke was untruthful during his sworn testimony at the instant arbitration hearing and overwhelming unrefuted testimony that he completely failed to report for military training as he claimed, resulting in his discharge from his reserve military unit.

Significantly, I have sworn testimony from PO T [REDACTED] H [REDACTED] # [REDACTED], a member of the FOP Bargaining Unit, who at the time in question herein, happened to be also the Readiness NCO of the Infantry Brigade of the Pennsylvania National Guard. His duties included the recording of the taking of attendance through the "roll call" taken in the beginning of the day and after lunch. He also testified without contradiction that in his military capacity he prepared PO Burke's discharge packet from the military.

Significantly, PPD Captain H [REDACTED] L [REDACTED] who authorized the military leaves testified herein that an audit of the leave records revealed that the grievant was no longer in the military reserves during the dates in question herein, when he applied and was granted the military leave. The grievant was compensated during his

absence in question. Consequently, the FOP contention that the grievant's behavior constituted off duty misconduct, was not convincing.

There was credible evidence that he was in fact marked "U"(C6) meaning AWOL on his scheduled training dates. However, he consistently maintained that he was there but could find nothing and no one to corroborate his claim of having reported. He claimed that on March 22, 2009, he contacted Sgt. H [REDACTED] by phone. However, under rebuttal testimony at the hearing before me Sgt. H [REDACTED] testified that he does not recall such a phone contact by the grievant.

I also considered the convincing sworn testimony of Commissioner Charles H. Ramsey, who stated in relevant part that, after a review of the documents in this case and the results of the P.B.I. hearing penalties, he was compelled to exercise his discretion to increase the penalty to dismissal. He properly considered the deliberate dishonesty and lack of integrity of a police officer, as in this instance, to be a very serious and intolerable infraction, constituting conduct unbecoming of an officer of the law.

Therefore, having thoroughly considered all the evidence including the arguments and allegations of both parties I have determined, for the above stated reasons, that grievant PO Sir James Burke #1664 was discharged for just cause.

His grievance is therefore denied and I make the following:

AMERICAN ARBITRATION ASSOCIATION

.....
In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

AWARD

CITY OF PHILADELPHIA, PA

Docket No. 14 390 01752 11

(P/O Sir James Burke #1664 PR # [REDACTED] Discharge.)

.....

The undersigned arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above parties, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

The disciplinary discharge of PO Sir James Burke #1664 PR# [REDACTED] was for just cause.

His grievance is denied.



ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY
COUNTY OF: SOMERSET

On this 12th day of October, 2012, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 3, 2009